

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

AND

THE NATIONAL LABOR RELATIONS BOARD

The United States Department of Labor (DOL), Wage and Hour Division (WHD), and the National Labor Relations Board (NLRB) (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to enhance and maximize the enforcement of the federal laws administered between the two agencies. The agencies are forming this partnership to encourage greater coordination through information sharing, joint investigations, training, and outreach.

This memorandum of understanding (MOU) is intended to memorialize this understanding between WHD and the NLRB and recognize the common interest of the agencies in the enforcement of the cases in which they collaborate under this agreement. This MOU is a voluntary agreement that expresses the good-faith intentions of WHD and the NLRB, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party, private person, or other third party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, or services, nor does this MOU require or authorize any kind of financial commitment on the part of the agencies. This memorandum outlines procedures to be followed by both WHD and the NLRB in working together to address the need for information sharing, joint investigations, training, and outreach between WHD and the NLRB.

WHD is responsible for administering and enforcing federal labor laws, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), worker protections provided in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this MOU limits WHD’s enforcement of these statutes.

The NLRB enforces the National Labor Relations Act (the NLRA).

The parties agree as follows:

I. Purpose

The purpose of this MOU is to maximize and improve the enforcement of the federal laws administered by DOL’s WHD and by the NLRB. This MOU will also encourage enhanced law enforcement and greater coordination between the agencies through information sharing, joint investigations, training, and outreach.

By entering into this MOU, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the agencies from participating in similar activities or arrangements with other entities.

II. Agency Authorities And Responsibilities

A. Wage and Hour Division:

Among other laws establishing worker protections, WHD enforces the FLSA, FMLA, MSPA, and worker protections provided in several temporary visa programs, including H-1B, H-2A, and H-2B which govern temporary employment of certain foreign workers. The FLSA establishes minimum federal standards for wages and hours of work, including requirements for the payment of overtime pay and of minimum wages. It also requires that certain nursing mothers receive a "reasonable break time" to express breast milk in a place other than a bathroom. Section 14(c) of the FLSA permits certain employers, when necessary to prevent the curtailment of employment opportunities, and subject to WHD certification, to pay sub-minimum wages to workers who have disabilities. The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping.

B. National Labor Relations Board:

The NLRA, which is enforced by the NLRB, ensures the right of private-sector workers to organize, to bargain collectively, and to otherwise engage in concerted activities, with or without union representation, in an effort to improve their pay and working conditions. It prohibits discrimination or retaliation based upon employees' engaging in union or protected concerted activities, or refraining from doing so. The NLRB's primary functions are to prevent and remedy unfair labor practices committed by employers and labor organizations and to conduct secret-ballot elections among employees to determine whether they wish to be represented by a labor organization.

III. Exchange of Information

A. Information Sharing:

1. WHD and NLRB may share, whether upon request or upon an agency's own initiative, any information or data that supports each agency's enforcement mandates, whether obtained in the course of an investigation or through any other sources to the extent permitted by law. This may include complaint referrals and other sharing of information in complaint or investigative files relating to alleged violations of the laws enforced by WHD and NLRB. The agencies will explore ways to efficiently systematize procedures to facilitate such information and data sharing, particularly in the areas of unlawful compensation practices, such as unlawful denial of minimum

wages or overtime pay, and retaliation or discrimination in compensation based on exercising rights guaranteed under the NLRA; working and living conditions of employees; denial of required break times; unilateral changes to wages, benefits and other terms and conditions of employment; discriminatory and/or retaliatory hiring, disciplinary and other employment practices; and the identification and investigation of complex employment structures, when appropriate.

2. This MOU will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
3. Requests for information under this section can be made by the following individuals:

(a) For DOL/WHD

- The Administrator
- The Deputy Administrator
- The Regional Administrators
- The Director of the Division of Enforcement Policy and Procedure
- The Regional Solicitors of Labor
- The Associate Solicitor, Division of Fair Labor Standards

(b) For NLRB

- The General Counsel
- The Deputy General Counsel
- The Associate to the General Counsel of the Division of Operations-Management, or her designee
- A Regional Director, or his/her designee

B. Points of Contact (POC) for Requests of Information and Responses:

1. Requests for information under this section should be directed to the following individuals:

(a) WHD requests for information under this section should usually be directed to the NLRB Regional Office where WHD believes that the information is located. WHD requesting officials may also direct their requests for information to any of the NLRB officials listed in III.A.3(b) above with the exception of the General Counsel.

(b) NLRB requests for information under this section should usually be directed to the WHD Regional Administrator in the region where the NLRB believes the information is located. NLRB requesting officials may also direct their requests for information to any of the DOL or WHD individuals listed in III.A.3(a) above with the exception of the Administrator.

2. Responses to requests for information under this section should be directed to the following individuals:

WHD and NLRB responses to requests for information under this section shall be made to the official who requested the information. The responding agency will provide copies of the requested documents or make the requested documents available to the requesting agency for inspection and copying and/or loan within ten days of receipt of the request, or as soon as practicable thereafter consistent with the availability of the responding agency's staff and other resources and the responding agency's own priorities.

3. Any transfer of information under this MOU shall only be made where not otherwise prohibited by law and in accordance with Section III.E. of this MOU. Information transferred between WHD and the NLRB under this MOU shall not be used by the receiving agency for purposes other than the enforcement of the laws enforced by the receiving agency.
4. This MOU does not prohibit the sharing of information between WHD and NLRB by any means other than those identified to the extent that such means are agreed to by both agencies and not prohibited by law.

C. Coordinated Investigations:

In appropriate cases the agencies will determine whether to conduct coordinated investigations of matters arising within both agencies' jurisdictions. If the agencies decide to conduct coordinated investigations, and both WHD and NLRB find overlapping statutory violations, they shall explore whether it is appropriate for one agency to settle or litigate the matter while the other holds it in abeyance, considering under which statute it would be most feasible and practical to proceed. If one agency holds its case in abeyance, the other agency will consult with the former agency before a case is settled. If the case is litigated, the litigating agency will timely advise the agency holding its case in abeyance of the final determination.

D. Training and Outreach:

WHD and NLRB shall provide training to each agency's staff; engage in outreach and public education; share or co-develop training materials and programs; or develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the agencies enforce. The agencies' training, outreach, and education efforts shall include coordination on the experiences and enforcement perspectives of each agency in identifying and investigating complex employment structures, when appropriate. The agencies may also meet periodically, and otherwise routinely share information, about their enforcement priorities and other identified employment trends.

E. Confidentiality and Disclosure:

1. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal statutes or laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets.
2. Confidential information obtained pursuant to this MOU or any process established to implement the MOU, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. Except as set forth in this paragraph, such information may not be used or disclosed by the receiving party for other purposes outside of the MOU or any process established to implement the MOU, to other authorities, or any third parties unless the producing party expressly approves such use or disclosure in writing. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act. When responding to a federal court order, a receiving agency shall notify and confer with the supplying agency prior to duplicating or disclosing information.
3. In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of WHD's employees sought, WHD requires that NLRB notify WHD's POC under Section B.
4. In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of NLRB's employees sought, NLRB requires that WHD notify NLRB's POC under Section B.
5. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the supplying agency's POC under Section B that such a request or subpoena has been received, so that the supplying agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

6. Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
7. The agencies will notify one another, through the agency POC identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOU.

F. Information Security:

1. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU remains the responsibility of the supplying agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated POC when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the supplying agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.
2. For information security purposes, after an agency receives information from the supplying agency, the supplying agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
3. However, in the event that the agency receiving the information experiences a security breach that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU, the agency experiencing the incident or disaster will send formal written electronic notification to the supplying agency's designated contact person as soon as practicable and no longer than 3 business days after detection of the breach. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU may have been inadvertently disclosed.
4. At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the supplying agency, except as required by law, including the Federal Records Act.

IV. Previous Agreements

This MOU supersedes the October 26, 1978 Memorandum of Understanding between DOL's Wage and Hour Division and the NLRB.

V. Resource Provisions

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

VI. Totality and Entire Agreement

Except as expressly provided in this MOU, this MOU constitutes the entire agreement between WHD and the NLRB with respect to the matters set forth herein.

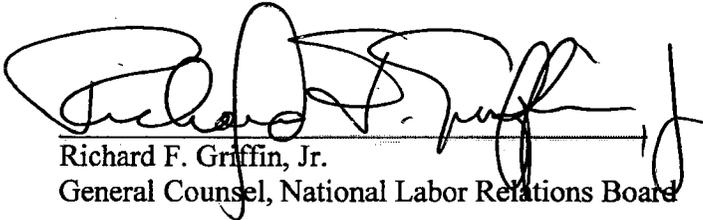
VII. Effective Date

This MOU will take effect immediately once signed by both parties and shall continue in force indefinitely. This MOU may be modified in writing by mutual consent of both agencies. This MOU may be terminated by either party upon 90 days written notice to the other agency. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.

This MOU is executed as of the 14th day of DECEMBER, 2016.

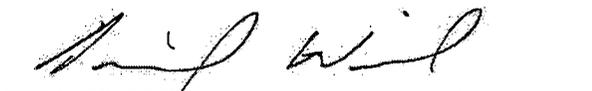
The following officials agree to the terms and conditions of this MOU:

For the NLRB:


Richard F. Griffin, Jr.
General Counsel, National Labor Relations Board

12/14/16
Date

For the Department of Labor:


Dr. David Weil
Administrator, Wage and Hour Division
U.S. Department of Labor

12/14/16
Date